

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9043 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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SHANKARBHAI MAKANBHAI RATHOD

Versus

DISTRICT MAGISTRATE

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Appearance:

MS BANNA DUTTA with MR ANIL S DAVE for Petitioner

MS HANSABEN PUNANI AGP for Respondent No. 1, 2, 3  
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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 05/08/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The petitioner herein challenges the order of preventive detention dated 5th October, 1998 made by the

District Magistrate, Bhavnagar, under the powers conferred upon him under Sub-section 2 of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, 'the Act'].

3. The petitioner is alleged to be a 'dangerous person' within the meaning of Section 2 (c) of the Act and his activities are found to be prejudicial to the maintenance of 'public order'. Three offences punishable under Chapter XVII of the IPC have been registered against the petitioner and are pending trial. Moreover, four individuals; on assurance of anonymity, have given statements in respect of the anti-social activities of the petitioner.

4. Among other grounds, Ms. Dutta has assailed the impugned order of detention on the ground that the applications for bail made in respect of the two offences pending trial have not been served upon the petitioner. It is contended that such applications are vital documents and are required to be furnished alongwith the grounds of detention. Besides, the detaining authority, in the present case, has considered the fact of petitioner's release on bail in all the criminal cases pending against him. Thus, the petitioner is deprived of his constitutional right to make an effective representation against the order of detention.

5. It is undisputed that alongwith the grounds of detention, the petitioner has not been furnished copies of the applications for bail made in respect of the offences registered as C.R Nos. 220 of 1997 and 146 of 1998. The Hon'ble Supreme Court in the matter of M. Ahmedkutty [1990 (2) SC p-1] has held that, 'the applications for bail and the orders made thereon are vital documents and should be made available to the detenu so as to enable him to make an effective representation against the order of detention. In absence of the said documents, the petitioner must be held to have been deprived of his right to make an effective representation against the order of detention.'

6. The petition is, therefore, allowed. The order dated 5th October, 1998; Annexure-A to the petition, is quashed and set-aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

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Prakash\*